

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING MAP AMENDMENT REPORT (#FZC-21-21)
PYTOSH-PYUN
DECEMBER 16, 2021

I. GENERAL INFORMATION

A. Project Description

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Sands Surveying, Inc., on behalf of Mark Pytosh and Hilda Pyun for a zoning map amendment within the Blanchard Lake Zoning District. The proposed amendment, if approved, would change the zoning on three properties from 'AG-40 Agricultural' and 'SAG-10 Suburban Agricultural' to 'AG-20 Agriculture.'

B. Application Personnel

ii Owners

Mark Pytosh
405 Blanchard View Dr.
Whitefish, MT 59937

Hilda Pyun
115 Whitefish Hills Dr.
350 Blanchard View Dr.
Whitefish, MT 59937

ii Technical Representative

Sands Surveying Inc., Attn: Donna Valade
2 Village Loop
Kalispell, MT 59901

C. Process Overview

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11th Street West in Kalispell.

1. Land Use Advisory Committee/Council

The proposal is not located within the jurisdiction of a Land Use Advisory Committee.

2. Planning Board

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on January 12, 2022 at 6:00 P.M. in the 2nd Floor Conference Room of South Campus Building located at 40 11th Street West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

3. Commission

In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment on February 24, 2022 at 9:00 A.M. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell after the Planning Board Hearing and Before the Commissioner's Hearing.

II. PROPERTY CHARACTERISTICS

A. Subject Property Location and Legal Description

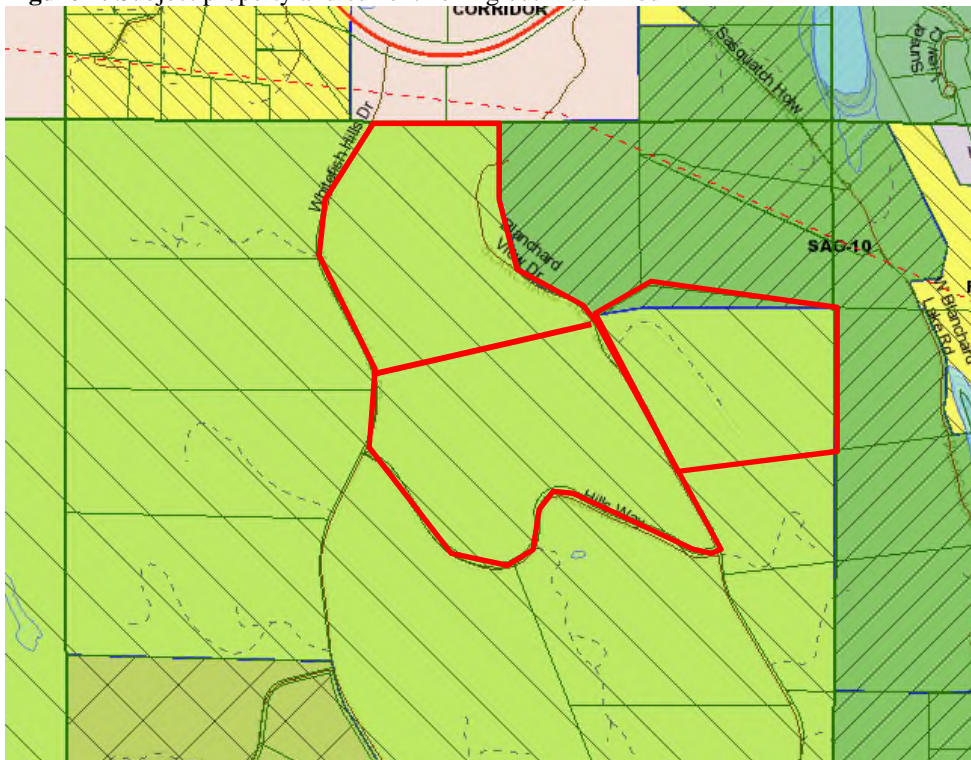
The total acreage of the subject properties is approximately 139.69 acres and is located along Whitefish Hills Drive and Blanchard View Drive near Whitefish, MT (see Figure 1). The property is legally described as:

Lots 1 and 2 of Subdivision 206 in Section 03, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

AND

A portion of Tract 1 of COS 21768 in the Northeast Quarter of Section 03, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property and current zoning outlined in red



B. General Character of and Reason for Amendment

The subject properties are comprised of 3 tracts, two are undeveloped and a single-family dwelling occupies one. The subject properties and surrounding properties are significantly forested and residential. The application indicates the reason for the amendment is so the zoning better matches the AG-20 zoned properties within the Whitefish Hills Subdivision to the southwest.

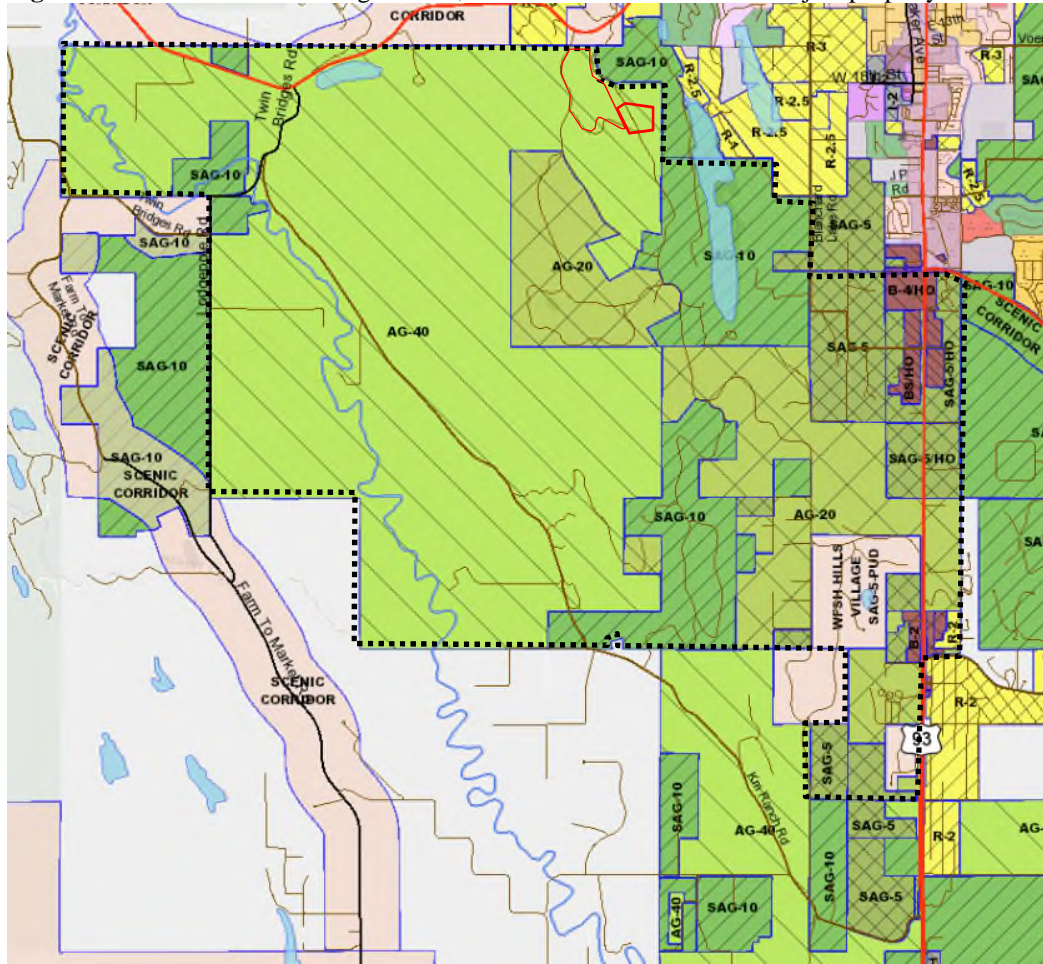
Figure 2: Aerial imagery of subject property



C. Adjacent Zoning and Character of the Overall Zoning District

The property is located in the Blanchard Lake Zoning District. The character of the zoning district in the vicinity of the subject property is generally large tract rural residential. The adjacent properties to the north are SAG-10 and Scenic Corridor, SAG-10 and AG-40 to the east, AG-40 to the west and AG-40 to the south.

Figure 3: Blanchard Lake Zoning District, outlined in black dash with subject property outlined in red.



D. Public Services and Facilities

Sewer: N/A
 Water: N/A
 Electricity: Flathead Electric Cooperative
 Natural Gas: Northwestern Energy
 Telephone: CenturyTel
 Schools: Whitefish School District
 Whitefish High School District
 Fire: Whitefish Rural Fire District
 Police: Flathead County Sheriff

III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on November 22, 2021:
 - Flathead County Sheriff
 - Flathead County Road Department
 - Flathead County Solid Waste
 - Flathead City-County Health Department (inter-office mail)
 - Flathead County Weeds & Parks Department

- Bonneville Power Administration
 - Montana Fish, Wildlife and Parks
 - Whitefish High School District
 - Whitefish School District
 - Whitefish Rural Fire Department
 - City of Whitefish
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
- Flathead County Road Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated November 29, 2021
 - Bonneville Power Administration
 - Comment: “At this time, BPA does not object to this request, as the property is located approximately 25 yards away from the nearest BPA transmission lines or structures.” Email received November 23, 2021
 - Flathead Environmental Health Department
 - Comment: “Environmental Health offers no comment regarding this proposed zone change.” Letter dated December 2, 2021.
 - City of Whitefish Fire Department
 - Comment: “At this time we have no problems or concerns with this request.” Letter dated November 30, 2021
 - Flathead Environmental Health Department
 - Comment: “This district requests all solid waste generated at the proposed location be hauled by a private hauler. Republic Services is the licensed (PSC) Public Service Commission private hauler in this area.” Letter dated November 29, 2021

B. Public Comments

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on December 22, 2021. Legal notice of the Planning Board public hearing on this application was published in the December 26, 2021 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment was physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A] on January 7, 2022. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member

of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for January 12, 2022 and/or the Commissioner's Public Hearing on February 24, 2022. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

IV. EVALUATION OF PROPOSED AMENDMENT

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

The AG-40 designation is defined in Section 3.05 FCZR as, *'A district to provide and preserve smaller agricultural functions and to provide a buffer protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.'*

Per Section 3.07 of the Flathead County Zoning Regulations (FCZR), SAG-10 is defined *'A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.'*

Per Section 3.06 of the Flathead County Zoning Regulations (FCZR), AG-20 is defined *'A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.'*

The permitted uses and conditional uses for the proposed and existing zoning contain few differences. The amendment will not change the permitted uses but would decrease the number of conditional uses by two: (17) Landfill, sanitary for disposal of garbage and trash; and (20) Rifle range. The amendment would change the permitted uses in the small portion of SAG-10 to add (11) Fish Hatchery; and (14) Kennel, which is permitted in both AG-40 and the proposed AG-20.

The bulk and dimensional requirements within the current and proposed zoning require a 20-foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20-foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20-foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For AG-40, SAG-10 and AG-20 the permitted lot coverage is 20% and maximum height for structures is 35 feet.

The existing zoning requires a minimum lot area of 40 acres and a portion of the split zoned property with SAG-10 requires a 10 acre minimum. The subject property totals 139.69 acres currently within 3 separate tracts and no additional lots could be created under the existing zoning. The proposed zoning requires a minimum lot area of twenty acres therefore approximately three additional lots could be created. The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are almost identical with the exception of minimum lot size.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). The subject property is not located in a Neighborhood Plan Area.

a. Flathead County Growth Policy

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Agricultural.' The proposed AG-20 zoning classification would appear to conform to the current designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

Part 4 of Chapter 2 the Growth Policy states, *'It is clear that agriculture plays a vital role in both the economy and culture of Flathead County. The custom and culture of agriculture in Flathead County is one of the features that is contributing to rapid growth and development. Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living.'*

Part 7 of Chapter 2 the Growth Policy states, *'The change in land uses from agriculture and timberlands to residential and the accompanying impacts of that change, create some of the greatest growth challenges to the county.'*

The proposed AG-20 zoning designation would allow for twenty acre lots and would still allow for agriculture/silviculture as a permitted use. Given the substantial similarities between the AG-40, SAG-10 and AG-20 zoning, the proposed zoning map amendment would not alter the characteristic of the neighborhood.

The introduction to Part 7 of Chapter 2 states, *'The density of residential developments is an issue raised throughout the public involvement process [...] Residential development, including the subdivision of land, is not inherently problematic. However, residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.'* It goes on to say that, *'Capacity is based on the size and quality of the road, and once the capacity is exceeded, public safety suffers. Low density residential land uses on low capacity roads are a match, but medium or high density land uses on low capacity roads create problems.'*

Part 9 of Chapter 2 states, *'Prohibiting development on a property just because a historic farmstead is there would be unreasonable. Allowing the destruction of a historic farmstead structure to make way for new town homes would also be unreasonable. In keeping with the vision principals outlined by the residents of Flathead County, development should seek to incorporate and highlight the cultural significance of historic places and artifacts.'*

The property is currently undeveloped and located in an area of large tract residential use. The low density, rural nature of the area is generally served by mostly gravel roads. The proposed 20 acre minimum lot size could establish 3 new lots which would add to potential residential use to an area with minimal public services.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - The amendment would allow the owner to subdivide but would also allow for the continuation of the existing use on the property.
- ❖ **G.3** – *Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and*

management and allowing a flexibility of private land use that is economically and environmentally viable to both the landowner and Flathead County.

- **P.3.3** – *Maintain flexibility of land use options to forest and agriculture land owners by focusing on mitigating the negative impacts of development.*
 - The proposed zoning would allow for the continuation of almost all uses allowed in the current zoning and future development of the properties could be possible through subdivision review or family transfer.
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses*
 - **P.4.3** – *Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)*
 - **P.4.5** – *Develop equitable and predictable impact-mitigation for converting agricultural lands to residential uses.*
 - The proposed zoning would allow for the continued use of agriculture/silviculture on the subject property while providing additional flexibility to the landowner to subdivide the property into twenty acre lots. Impacts on public services will be discussed in more detail below.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
 - The AG-20 designation would allow for densities of one dwelling unit per twenty acres for single family use. One dwelling unit per twenty acres would not require public water and sewer. Further discussion on public utilities is contained later in this report.
 - **P.8.2** – *Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.*

The Seven Elements of the Public’s Vision include:

 - **Protect the Views**

The vision states, ‘One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. “Scenic resources” are valued throughout the county regardless of age, gender or location.’ The proposed zone change if approved would likely have minimal impact on views because the addition of twenty acre lots will not likely reduce open space views due to the low density.
 - **Promote a Diverse Economy**

The vision states, ‘The cost of living and home ownership should be affordable to the median income.’ The proposed zone change if approved could allow for Accessory Dwelling Units which have the potential to add affordable rental units to the rental pool.

- *Manage Transportation*
Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.
- *Maintain the Identity of Rural Communities*
The vision states, *'Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.'* The proposed AG-20 zoning is an agricultural zoning district that would allow for rural residential development.
- *Protect Access to and Interaction with Parks and Recreation*
This report contains a discussion on parks and recreation below.
- *Properly Manage and Protect the Natural and Human Environment*
The vision states, *'Air and water quality were mentioned frequently as well as co-habitation of people and wildlife being qualities that make Flathead County unique and desirable. Many residents expressed a desire to protect the lakes, rivers, ponds, groundwater and air for future generations.'* The property does not contain any surface waters which would be impacted by this proposal. While lots 20 acres or larger are exempt from DEQ review, water rights and septic system approval would require review by applicable agencies.
- *Preserve the Rights of Private Property Owners.*
As previously stated, the amendment would allow the owner to subdivide the property, but would also allow for the continuation of agricultural on the property.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - This report contains discussion on the proposal's potential burden on schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service below.
- ❖ **G.46** – *Honor the integrity and purpose of existing neighborhood plans respecting the time and effort of the community involvement that has taken place.*
 - The subject property is located outside of any neighborhood plan area.

Finding #1: The proposed zoning map amendment complies with most of the goals and policies outlined in the Flathead County Growth Policy such as private property rights, maintaining rural community identity, and preservation of rights to farm/silvicultural use.

2. Whether the proposed map amendment is designed to:

a. Secure safety from fire and other dangers;

The subject property is located within the Whitefish Rural Fire District and the nearest fire and emergency response center is located approximately 3.5 road miles east of the property at the intersection of O'Brien Avenue and Flathead Avenue. The Whitefish Rural Fire Department would respond in the event of a fire or medical emergency. The Whitefish Rural Fire Department had no objections on this proposal.

The application states, "The proposed action of the zone change will neither increase nor reduce the dangers of fire, panic, or other hazards. The proposed AG-20 and existing AG-40 zoning have the same setbacks and lot coverage with the difference being density. AG-20 has a minimum lot size of 20 acres while AG-40 has a minimum lot size of 40 acres. The properties are located within the Rural Whitefish Fire District and the Fire Station is located approximately 3.6 road miles to the east. There are no wetlands or floodplain on the property."

The subject property is located in the Wildland Urban Interface (WUI) and designated as Medium High County Wide Priority Area. According to the Flathead County Growth Policy, "The WUI is commonly described as the zone where structures and other human development meet and intermingle with undeveloped forests. This WUI zone is comprised of private and public lands and can pose risks to life, property, and infrastructure in associated communities if not mitigated."

The property is forested however, from an aerial perspective and confirmed by site visit, thinning has appeared to have taken place. Firewise practices would be recommended if a subdivision is developed on the property in the future. Previous comment from DNRC for similar zone changes in the area, which are applicable to this property, state, "Consider following Firewise Construction guidelines or those outlined in International Wildland Urban Interface code (noncombustible materials, enclosed eaves and soffits, etc.). [...] annual maintenance to clear roofs, gutters, eaves of leaves and other debris as well as reassessment and continued thinning of vegetation and re-growth. We recommend: continuing to separate tree canopies, creating "islands" of bushy vegetation, and pruning tree branches eight feet from the ground to remove ladder fuels."

Primary access to the southern most of the three properties is currently via Whitefish Hills Drive and Blanchard View Drive. Whitefish Hills Drive is a paved, two-lane County maintained road within a 60 foot easement. Blanchard View Drive is a two-lane, private road within a 60 foot easement. Both roads would provide adequate access for emergency vehicles.

The subject property appears to be mapped as unshaded Zone X, areas determined to be outside the 0.2% annual chance floodplain on FEMA FIRM Panel 30029C1070J.

Finding #2: The proposed map amendment is not specifically designed to secure safety from fire because it would allow for additional houses in the WUI, however, emergency services are available, Whitefish Hills Drive and Blanchard View Drive would be adequate for access in the event of an emergency, the combination of which lowers the risk to an acceptable level and the property does not contain any floodplain.

b. Promote public health, public safety, and general welfare;

The subject property is located within the Whitefish Rural Fire District. The property is located about 3.5 road miles east of the nearest fire and emergency response center, which is located at the intersection of O'Brien Avenue and Flathead Avenue. The Whitefish Rural Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property.

According to the applicant, "The properties have access from Blanchard View Drive a paved two-lane private road within a 60 foot easement and Whitefish Hills Drive a paved private two lane road within a 60 foot easement. The Flathead County Sheriff's Office provides police protection and the Whitefish Fire Department provides fire and ambulance service to the existing and proposed residences.

"The proposed AG-20 zoning classification has the potential to increase density with smaller minimum lot sizes of 20 acres then the existing AG-40 with 40 acre minimum and the setbacks are the same for both zones. The sliver of 2.467 of SAG-10 located on the north of the Pytosh property was created by a BLA in 2021. The properties are bordered on the east by SAG-10, the north by Scenic Corridor and the west and south by AG-40. Approximately 0.2 miles to the southwest is existing AG-20. The maximum density on the 104.08 acres proposed for AG-20 on the 2 Pyun properties could result in 3 additional lots while the 35.61 acre Pytosh property would not result in any additional lots as it does not have the 40 acres needed to meet the 20 acre minimum lots required by AG-20. The proposed zoning designation will continue to promote the health, safety and general welfare of the public."

Finding #3: The proposed zoning map amendment would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, future development would be similar to uses already allowed in the current AG-20 zoning, and emergency service providers can anticipate likely emergencies based on similar existing and proposed uses.

c. Facilitate the adequate provision of transportation, water, sewer, schools, parks, and other public requirements.

As previously stated, the subject properties are located along Whitefish Hills Drive which is a public, paved two-lane road within a 60 foot easement and Blanchard View Drive which is a private, paved two-lane road within a 60 foot easement.

Using standard trip generation, residential uses typically generate 10 vehicle trips per dwelling for single family residential. The property is approximately 139.69 acres in size. The proposed zoning could allow for approximately three additional lots for a total of six single family dwellings which would generate an increase of approximately 60 ADT. The Flathead County Road and Bridge Department indicated no concern with the proposal.

The subject property is not located within close proximity to public water or sewer service and would be served by individual well and septic. The applicant will be required to work with Flathead City-County Health Department to meet the needs of any future development. It does not appear as though the proposal would have a negative impact on water and sewer, however, the proposal would not be subject to the Sanitation in Subdivision Act as all future lots would be at least 20 acres in size.

The subject property is located within the Whitefish School District and Whitefish High School District. According to census data for Flathead County, the average household size is 2.46 persons and approximately 16.5% of the population is between the ages of 5-18 years. The proposed zoning has the potential to add two school age children. The increase in school age children that could result from this proposal is not likely to impact the schools. The creation of 20 acre lots would not require parkland dedication as the lots typically contain enough open space for the residents.

Finding #4: The proposed zoning map amendment would facilitate the adequate provision of transportation because the existing road bearing access to the properties are designed to County Standards and the County Road Department had no comments regarding this proposal and future development of the properties would accommodate the additional traffic.

Finding #5: The proposed amendment would facilitate the adequate provision of water, sewer, schools, parks, and other public requirements because further division of land on the subject property would be subject to the Subdivision and Platting Act, there would be minimal impact on parks and the proposal has the potential to generate two school age children.

3. In evaluating the proposed map amendment, consideration shall be given to:

a. The reasonable provision of adequate light and air;

The bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The minimum lot area for the proposed AG-20 zoning designation is twenty acres and the minimum lot area for the existing AG-40 zone is 40 acres. The density allowed within the proposed zoning would be twice the density allowed within the current AG-40 zoning designation, albeit the proposed AG-20 zone would still be considered relative rural and low density. The bulk and dimensional requirements for the AG-20 zoning designation have been established to provide for a reasonable provision of light and air.

Finding #6: The proposed zoning map amendment will provide adequate light and air to the subject property because future development will be required to meet the

bulk and dimensional, setbacks and lot coverage requirements within the proposed AG-20 zoning designation.

b. The effect on motorized and non-motorized transportation systems;

As previously stated, primary access to the properties is currently via Whitefish Hills Drive and Blanchard View Drive. Whitefish Hills Drive is a public, paved two-lane road within a 60 foot easement and Blanchard View Drive which is a private, paved two-lane road within a 60 foot easement.

Traffic counts are not available for Blanchard View Drive or Whitefish Hills Drive from the Flathead County Road and Bridge Department. Highway 93 is just north of the subject properties and Whitefish Hills Drive connects to Highway 93 had an ADT count of 3,773. However, comments received from the Flathead County Road and Bridge Department indicate no concern at this time. The subject property could be divided into three additional lots with the proposed zoning. Based on projected land uses arising from the proposed zone change this proposal would likely generate an additional 50 ADT as one house exists.

Given the current status of Whitefish Hills Drive at this location, it would be capable of handling the increase in traffic. It is anticipated since the Road and Bridge Department had no comment, and given the low estimated traffic generated by this proposal Whitefish Hills Drive and Blanchard View Drive would be capable of handling the increased traffic.

There is no existing bike/pedestrian facilities currently located along Whitefish Hill Drive or Blanchard View Drive and no future bike/pedestrian trail is identified on this section of Whitefish Hills Drive or Blanchard View Drive in the Flathead County Trails Plan.

Finding #7: The proposal would not have negative effects on motorized transportation because the existing two lane paved roads appear adequate to accommodate the change in zoning, and the additional traffic.

Finding #8: Effects on non-motorized transportation systems will be minimal because the change will not have an impact on the bicycle/pedestrian trails in the county.

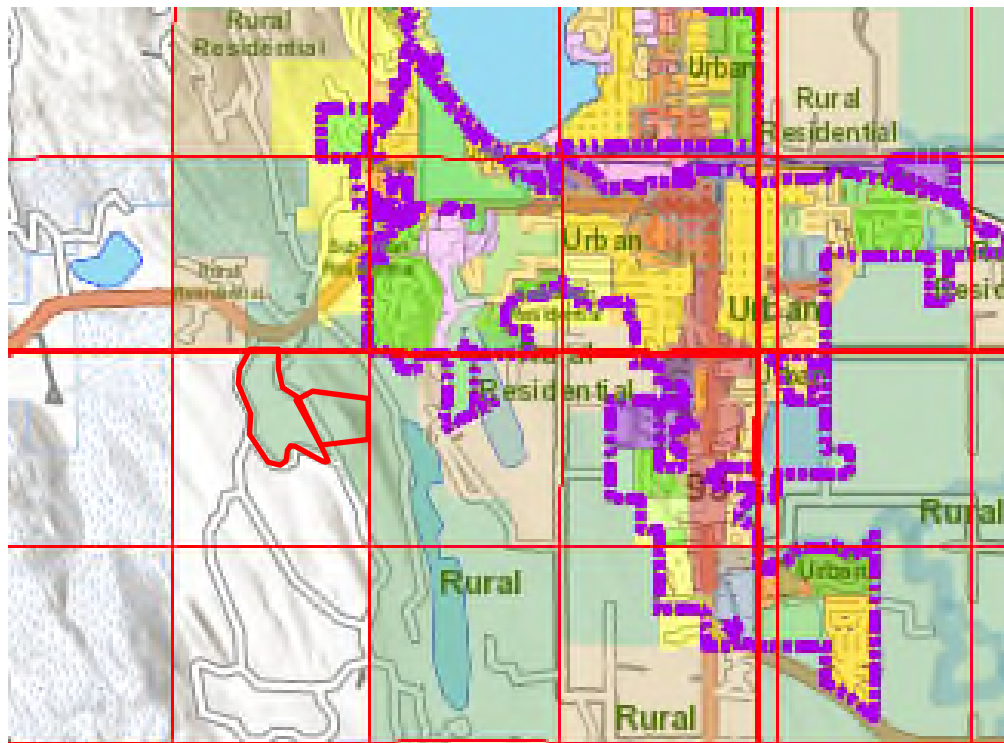
c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject properties are approximately a quarter mile from the City of Whitefish. As of the date of the completion of this staff report, no comments have been received from the City of Whitefish about this proposal. According to the application, “The subject properties are located under 0.25 miles southwest of the City limits of Whitefish with the nearest Whitefish zoning of WCR (Country Residential – 2.5 acre minimum), WA (Agricultural – 15 acre minimum) and WLR (One-family limited residential – 15,000 square feet). AG-20 is comparable to the Whitefish WA zoning to the northeast.”

The Whitefish City-County Growth Policy Future Land Use Map includes the subject property. The Whitefish City-County Growth Policy Future Land Use Map designated the property as “Rural.” According to the Whitefish City-County

Growth Policy the “Rural” land use designation is defined as, “Open lands with decidedly rural character, including farmlands, pasture lands, timber harvesting and management areas, and forest lands generally fall under this designation. Agricultural and timber management are generally allowed, but residential densities are extremely low. This designation includes “important farmlands” as defined by National Resources Conservation Service criteria. Zoning is mainly WA-10 and WA-20.” The City of Whitefish does not have a WA-10 or WA-20 zone list in their ordinance but does have a WA zone with a 15 acre minimum lot size.

Figure 6: Northern portion of City of Whitefish Growth Policy Future Land Use Map (Property outlined in red)



Finding #9: The proposal appears to be compatible with urban growth in the vicinity of Whitefish because the property is located within the City of Whitefish Growth Policy Future Land Use Map, the “Rural” designation calls for 10 to 20-acre minimum lots and the City of Whitefish had no comments regarding this request.

d. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a

review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. The zoning allows a use that differs significantly from the prevailing use in the area.

The intent of the current ‘AG-40 Agricultural’ zoning designation is a district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development and ‘SAG-10 Suburban Agricultural’ zoning designation is a district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development. The proposed “AG-20 Agriculture” is a district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.

The properties to the west, south, and east of the subject property are zoned AG-40, the existing zoning designation. The property to the west is zoned Scenic Corridor. The closest AG-20 zoning is quarter mile from the subject properties. While the proposed agricultural zoning designation is not adjacent to other AG-20 zoning, it does not differ significantly from the AG-40 zoning designation.

ii. The zoning applies to a small area or benefits a small number of separate landowners.

The zoning map amendment would apply to three tracts of land owned by two landowners, covering approximately 139.69 acres.

iii. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.

The subject property is in the vicinity of the AG-40 zoning and would create 139.69 acres of AG-20 Agriculture zoning. The uses that are allowed within the proposed zone would be almost identical to the AG-40 zoning in the immediate vicinity and there are a number of 20 acre or less lots within a 1 mile radius.

The character of the district around the subject property consists of large tract residential use or undeveloped. The proposed zone change is not likely to be at the expense of the surrounding landowners or the general public because the proposed use is almost identical to the existing uses.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the

proposed zone change is in the vicinity of other large tract residential lots, and the proposed AG-20 would allow for similar uses that exist in the immediate vicinity.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject property is located within the Blanchard Lake Zoning District and is located within a forested and low density area of the county (Figures 2 and 3).

Previous sections of this report have discussed the differences between permitted and conditional uses in the existing AG-40 zoning and the proposed AG-20 zoning designation. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Most of the land uses listed as permitted uses in the proposed AG-20 zone exist in the vicinity of the subject property such as; single family residential and agricultural/silvicultural use. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area. The uses allowed in the proposed zoning are similar to the existing uses.

Finding #11: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed AG-20 zoning designation allows for similar uses to the neighboring single family residential and agricultural/silvicultural use.

4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The subject property is approximately a quarter mile to the City of Whitefish. The City of Whitefish Planning Department was sent an agency referral but as of the date of the completion of this staff report, did not provided comment on this proposal. The City has a zoning use district with a similar minimum lot size to the proposed AG-20 zone. The closest City of Whitefish zones in proximity to the subject property are WCR (Country Residential), WA (Agricultural) and WLR (One-family limited residential). AG-20 is comparable to the Whitefish WA zoning to the northeast

The WA zone which allows for agricultural uses has a minimum lot size of 15 acres. According to Section 11-2A-1 of the Whitefish Zoning Ordinance the WA district is, *“intended for areas for silviculture, agricultural functions, outdoor recreation purposes, open spaces or future development, and for detached single-family homes with customary farm and/or accessory buildings situated in a setting conducive to a rural lifestyle.”* The permitted and conditional uses within the City’s WA zone allows for many of the uses that are permitted and conditionally permitted within the proposed AG-40 and AG-20. The proposed AG-20 zone has a minimum lot size requirement more than the minimum lot size of the WA zones.

Finding #12: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the proposed AG-20 zone has a minimum lot size requirement greater than minimum lot size of the neighboring WCR, WLR and WA zones but are less than the minimum of the WA zone and the and the City of Whitefish had no comments regarding this request.

V. SUMMARY OF FINDINGS

Finding #1: The proposed zoning map amendment complies with most of the goals and policies outlined in the Flathead County Growth Policy such as private property rights, maintaining rural community identity, and preservation of rights to farm/ silvicultural use.

Finding #2: The proposed map amendment is not specifically designed to secure safety from fire because it would allow for additional houses in the WUI, however, emergency services are available, Whitefish Hills Drive and Blanchard View Drive would be adequate for access in the event of an emergency, the combination of which lowers the risk to an acceptable level and the property does not contain any floodplain.

Finding #3: The proposed zoning map amendment would not have a negative impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire Department, Flathead County Sheriff, future development would be similar to uses already allowed in the current AG-20 zoning, and emergency service providers can anticipate likely emergencies based on similar existing and proposed uses.

Finding #4: The proposed zoning map amendment would facilitate the adequate provision of transportation because the existing road bearing access to the properties are designed to County Standards and the County Road Department had no comments regarding this proposal and future development of the properties would accommodate the additional traffic.

Finding #5: The proposed amendment would facilitate the adequate provision of water, sewer, schools, parks, and other public requirements because further division of land on the subject property would be subject to the Subdivision and Platting Act, there would be minimal impact on parks and the proposal has the potential to generate two school age children.

Finding #6: The proposed zoning map amendment will provide adequate light and air to the subject property because future development will be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed AG-20 zoning designation.

Finding #7: The proposal would not have negative effects on motorized transportation because the existing two lane paved roads appear adequate to accommodate the change in zoning, and the additional traffic.

Finding #8: Effects on non-motorized transportation systems will be minimal because the change will not have an impact on the bicycle/pedestrian trails in the county.

Finding #9: The proposal appears to be compatible with urban growth in the vicinity of Whitefish because the property is located within the City of Whitefish Growth Policy Future Land Use Map, the “Rural” designation calls for 10 to 20-acre minimum lots and the City of Whitefish had no comments regarding this request.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change is in the vicinity of other large tract residential lots, and the proposed AG-20 would allow for similar uses that exist in the immediate vicinity.

Finding #11: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed

AG-20 zoning designation allows for similar uses to the neighboring single family residential and agricultural/silvicultural use.

Finding #12: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the proposed AG-20 zone has a minimum lot size requirement greater than minimum lot size of the neighboring WCR, WLR and WA zones but are less than the minimum of the WA zone and the and the City of Whitefish had no comments regarding this request.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal does not comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: LM